



# THE INTERIM

November 2009

A monthly newsletter of the Montana Legislative Branch

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch Website at [leg.mt.gov](http://leg.mt.gov).

## It's Almost Census Time Again, and Montana Is Counting on You

Article I, section 2, of the U.S. Constitution requires a complete count of the nation's population every ten years. The next count will occur April 1, 2010, and census forms will be mailed to Montana residents before then. The census is used to determine how many representatives from each state will serve in the U.S. House of Representatives, for the apportionment and redistricting of the Montana Legislature, and for the allocation of federal funds to local communities. It is important that all Montanans are counted.

On Sept. 23, Montana's Complete Count Committee launched a census awareness campaign to keep Montanans informed about the census and the importance of obtaining a complete population count. Several subcommittees were formed to assist in that effort. One of these is the Government Subcommittee, consisting of legislators and representatives from the governor's office, local government, and higher education.



The Government Subcommittee represents state and local governments in activities between the U.S. Census Bureau and state and local governments, ensures that state elected officials are aware of and included in statewide activities, and works with state and local governments to disseminate census information. Reps. Shannon Augare, Tony Belcourt, Chuck Hunter, Scott Reichner, Jon Sesso, and Wayne Stahl and Sens. Kim Gillan and Ryan Zinke participated in the kickoff campaign.

Legislators are urged to become community leaders to get the word out about the upcoming census and to encourage their constituents to participate by filling out the census form. The new census form is similar to the former "short form." It asks only 10 questions about the number of people living at a residence and their sex, age, and race. It will take about 10 minutes to fill out.

The census form and a treasure trove of information are available at [www.2010.census.mt.gov](http://www.2010.census.mt.gov). Similar information will soon be available

on the Montana Legislative Branch website under the "For Legislators" link. State and county census data are available on the Census and Economic Information Center, Montana Department of Commerce, web page at [ceic.mt.gov](http://ceic.mt.gov).

### More to Come

Between now and April, *The Interim* newsletter will provide more details about the census and what legislators, local government officials, organizations, and residents of the state can do to make next year's census the most successful ever.

Topics to be covered in upcoming issues will include privacy and confidentiality of census information, response rates and hard-to-count populations, the various uses of census information, the fate of the census long form, and available resources, such as news releases and public service announcements.

For more information call the Census and Economic Information Center at (406) 841-2740 or Susan Byorth Fox, executive director, Legislative Services Division, at (406) 444-3066.

## Legislative Information Officer Named to NCSL Executive Committee

Gayle Shirley, legislative information officer, has been appointed to the executive committee of the Legislative Information and Communication Staff Section (LINCS) of the National Conference of State Legislatures.



*Shirley*

LINCS is the newest of 10 staff sections of NCSL. Its membership includes close to 400 nonpartisan, bipartisan, and partisan legislative staff nationwide whose work involves public information, civic education, and media relations.

Shirley's appointment occurred during a LINCS professional development seminar in September. She will serve a 2-year term. Her assignments will include chairing a committee that provides guidance on improving the NCSL website and serving on a committee that judges the NCSL Online Democracy Award competition for excellence in legislative websites. If you have suggestions for improving the NCSL

website ([ncsl.org](http://ncsl.org)), contact Gayle Shirley at [gshirley@mt.gov](mailto:gshirley@mt.gov) or (406) 444-2957.

## Health Care Study, Mental Health Proposals to Occupy CFHHS Committee in November

Health care will top the agenda again when the Children, Families, Health, and Human Services Interim Committee meets Nov. 16 in Room 137 of the Capitol.

The committee will continue with the SJR 35 study of the Montana health care system. Members will receive an update on federal health care reform legislation, hear about health information technology efforts in Montana, and continue their review of topics related to primary care.

The committee is expected to revisit recommendations made as part of a mental health study conducted last interim by a consulting firm. Because the committee did not receive the recommendations until October 2008, the committee asked the state Department of Corrections and Department of Public Health and Human Services to review the recommendations and discuss them with the committee this interim. The two departments have been asked which recommendations they believe could be put into effect at the agency level and which recommendations may be beneficial but would require legislative action.

DPHHS will report on other agency matters, including the implementation of three mental health bills approved last session and the Healthy Montana Kids program.

An agenda and meeting materials will be posted to the committee web page ([leg.mt.gov/cfhhs](http://leg.mt.gov/cfhhs)) in early November. For more information, contact Sue O'Connell, committee staff, at (406) 444-3597 or [soconnell@mt.gov](mailto:soconnell@mt.gov).

## Districting & Apportionment Commission Learns about Census, District Mapping

The Districting and Apportionment Commission met Sept. 24 for the first time since the appointment of former Supreme Court Justice Jim Regnier as the commission's presiding officer.

Mary Craigle, of the Census and Economic Information Center, Montana Department of Commerce, discussed the public relations effort under way in Montana to inform citizens about the 2010 census and to encourage their participation (see related article on p. 1). Lorie Palm,

also with CEIC, described the Phase II project recently completed by the center to digitize voting precinct boundaries in many of Montana's counties. The results of the project will help the commission when it begins to draw maps in 2011.

Legislative staff reported on the various redistricting software packages that they are testing for commission use.

Finally, the commission considered a draft work plan for 2009-2013. Taking into account the public comment on the work plan and the previous round of redistricting, the commission voted to hold at least three public hearings to take comments on the redistricting criteria the commission will use for developing redistricting plans.

Although the schedule for the hearings has not been set, the commission plans to hold one meeting each in the western and eastern parts of the state and a third in Helena.

For more information about the commission, contact Rachel Weiss, commission staff, at (406) 444-5367 or [rweiss@mt.gov](mailto:rweiss@mt.gov). Or visit the commission web page at [leg.mt.gov/districting](http://leg.mt.gov/districting).

## Committee Lines up Remote Broadcast to Expand Reach of Workers' Comp Study

Instead of hitting the road for its Nov. 17 meeting, the Economic Affairs Interim Committee will ride the airwaves from Room 152 of the Capitol, using a MetNet broadcast to the MSU-Billings campus for most of the morning session. The meeting starts at 8:30 a.m. with committee member updates on workers' compensation-related meetings that they have attended.

The MetNet broadcast is scheduled to start at 9 a.m. Billings-area medical providers will discuss their ideas for changes to the workers' compensation system. They will also cover defensive medicine concerns, criteria that could be used to create a medical review board, availability of medical care for injured workers, and the extent of fraud in the workers' compensation system.

A second panel of employers and injured workers, also from the Billings area, will discuss the problems of getting injured workers back to work and their perceptions of fraud in the workers' compensation system.

Back in Helena, a third panel will review safety programs for agriculture and livestock producers. The presentation by Les Graham and Gene Surber with the Montana State Fund Ag Safety Program will be followed by public comment on workers' compensation concerns.

In the afternoon, which does not involve a MetNet broadcast, Ann Clayton, a consultant hired by the Montana Department of Labor and Industry, will present reports on fraud and other workers' compensation research topics. Jerry Keck, of the Department of Labor and Industry, will describe work being done by medical providers to develop utilization and treatment guidelines.

The remainder of the meeting will focus on other topics of interest to members, including unemployment insurance and licensing boards; an update of a Legislative Audit Committee report on fantasy sports parimutuel gambling (see related article on p. 7) that was requested by the committee in late 2008; and review of agency administrative rules.

As they become available, an agenda and other meeting materials will be posted to the committee web page at [leg.mt.gov/eaic](http://leg.mt.gov/eaic). For more information about the meeting, including the site of the MetNet broadcast at MSU-Billings, contact Pat Murdo, committee staff, at [pmurdo@mt.gov](mailto:pmurdo@mt.gov) or (406) 444-3594.

## Education, Local Government Committee Hears about Wide Variety of Topics

The Education and Local Government Interim Committee met Oct. 1-2 to consider a variety of topics, including historic preservation, interim or "emergency" zoning, the Traffic Education Program's approach to cell phones and texting, and shared policy goals and accountability measures for education.

Questions about the HJR 32 study and historic preservation in general posed by several committee members at ELG's June 30 meeting indicated a need for an overview of historic preservation projects and the entities that develop, support, and conduct them. Mark Baumler, the state historic preservation officer; Chere Jiusto, with the Montana Preservation Alliance; and Arni Fishbaugh, with the Montana Arts Council; reported on their respective roles in state historic preservation programs and projects. Dave Cole, with the Community Development

Division of the state Department of Commerce, discussed the Montana Recovery Act funding and application process for historic preservation projects.

Staff updated the committee on efforts by the Department of Natural Resources and Conservation to produce guidelines for development within wildland-urban interface areas and on discussions of wildland fire by the Environmental Quality Council. Dr. Bill Bryan from the Rural Landscape Institute discussed Montana's rural-urban disparities and his related work.

Representatives of the Montana Association of Realtors, the Montana Smart Growth Coalition, the Montana Association of Counties, and individual developers presented their ideas on interim or "emergency" zoning. These presentations set the stage for a more in-depth panel discussion at the committee's December meeting.

Oct. 2 was Education Day for the committee. The Office of Public Instruction, the Office of the Commissioner of Higher Education, the Board of Public Education, and the Board of Regents discussed their perspectives on HJR 6 and SJR 8, the resolutions directing these entities to work with ELG on K-12 and K-20 shared policy goals and accountability measures. Rep. Wanda Grinde, committee chair, appointed Sen. Bob Hawks, Sen. Jim Peterson, Rep. Bob Lake, and Rep. Edith McClafferty to a subcommittee to engage the education community in these efforts. The subcommittee will meet Nov. 9 to organize and plan for accomplishing its assigned duties.

The newly elected chair and vice chair of the Montana Virtual Academy – Dr. Bruce Messinger and Dennis Parman, respectively – reported on the academy's activities and future plans. Mary Sheehy Moe, deputy commissioner for two-year education, presented OCHE's efforts in enhancing two-year education opportunities. ELG's legal staff provided background information on SJR 2, a study of the process for establishing community colleges.

OPI reported on how the Traffic Education Program deals with driver cell-phone use, text messaging, and distracted driving.

ELG's next meeting is scheduled for Dec. 10-11. For more information, check the committee web page at [leg.mt.gov/elgic](http://leg.mt.gov/elgic) or contact Leanne Heisel at (406) 444-3593 or [lheisel@mt.gov](mailto:lheisel@mt.gov).

## Energy Committee Continues Work on Redesign of State Energy Policy

The Energy and Telecommunications Interim Committee will meet Nov. 9-10 in Room 102 of the Capitol to discuss several timely issues related to electricity rates and energy resources in Montana.

The committee will work on the review and possible revision of the state's energy policy required by SB 290. In October, the committee collected public comment on three specific areas:

- increasing the supply of low-cost electricity with coal-fired generation;
- promoting alternative energy systems; and
- reducing regulations that increase ratepayers' energy costs.

The November meeting will focus on those three topics. All public comments are posted on the committee web page at [leg.mt.gov/etic](http://leg.mt.gov/etic).

Gordon Criswell, environmental manager at the PPL Montana Colstrip Steam Electric Station, and Tom Power, an economist who concentrates on regional and resource issues, will discuss coal-fired generation in Montana.

The ETIC will then consider a related topic: potential federal regulation of greenhouse gases. PPL Montana, the Natural Resources Defense Council, the Montana Petroleum Association, and the Montana Environmental Information Center will weigh in on greenhouse gas emissions. The committee is monitoring the development of national programs to reduce greenhouse gases. Because the design of such a program could require individual state responsibilities in certain areas, the committee is gathering information on the potential impacts of a program on Montana's environment and economy.

The committee will also discuss the prices Montana customers pay for electricity and will hear from a panel about alternative energy systems. The alternative energy panel will focus on small-scale distributed generation. Invited participants include the Alternative Energy Resources Organization, Solar Plexus, and the Flathead Electric Cooperative. The cooperative is capturing methane at the Flathead County landfill to fuel a 1.6-megawatt power plant. It is the first landfill gas-to-energy project in Montana.



The two-day meeting will include presentations on TransCanada's Keystone XL Pipeline Project, Native American Resource Partners, and Universal System Benefits activities by Montana utilities and cooperatives.

Finally, the committee will review policy points raised in September about wind integration, the use of state lands for energy generation, and transmission line development and decide which points deserve further consideration.

In December, the ETIC will ask for public comment on the last three energy policies outlined in SB 290. For more information about the committee, contact Sonja Nowakowski, committee staff, at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or (406) 444-3078.

## Legislative Audit Committee Reviews Numerous Audit Reports in September

The Legislative Audit Committee met Sept. 29 to review a variety of audit reports. The complete reports are available at [leg.mt.gov/auditreports](http://leg.mt.gov/auditreports). The following reports were issued:

### Financial-Compliance Audits

**Office of Public Instruction (09-19):** This financial-compliance audit report contains the results of an audit of the Office of Public Instruction (OPI) for the two fiscal years ending June 30, 2009. The report contains six recommendations directed to the office. They address:

- controls and documentation for the School Nutrition Program,
- monitoring and testing internal controls,
- compliance with state laws, and
- monitoring schools that receive Special Education funding.

American Recovery and Reinvestment Act money will be subject to the Special Education monitoring control, which is discussed in the sixth recommendation.

A prior audit report contained two recommendations to the office.

**Montana State Library Commission (09-23):** This audit report is the result of a financial-compliance audit of the Montana State Library Commission for the two fiscal years ending June 30, 2009. A qualified opinion was issued on

the Schedule of Total Revenues & Transfers-In for fiscal year ending June 30, 2008, and the Schedule of Changes in Fund Balances for both fiscal years. The reader should use caution in relying on the information presented on these financial schedules, as well as the supporting data on the state's accounting system. An unqualified opinion was issued on the Schedule of Total Revenues & Transfers-In for fiscal year ending June 30, 2009, and the Schedules of Total Expenditures & Transfers-Out for both fiscal years.

### Financial-Related Audits

**University of Montana (All Campuses) (09-12):** A financial-related audit was performed of the University of Montana (all campuses) for the two fiscal years ending June 30, 2009. The previous report for the two fiscal years ending June 30, 2007, contained five recommendations. The university implemented three, partially implemented one, and did not implement the other.

This report contains two recommendations directed to the university. The first recommendation addresses the need for monitoring and managing cash balances to ensure compliance with state law and federal regulations. The second recommendation addresses the need for periodic review of grant file documentation to ensure internal control procedures are operating as intended; this control deficiency impacts the university's ability to administer awards received through the American Recovery and Reinvestment Act in accordance with applicable federal regulations.

**Montana State University (All Campuses) (09-13):** A financial-related audit was performed of Montana State University (all campuses) for the two fiscal years ending June 30, 2009. This report contains six recommendations related to hiring processes, overtime documentation, negative cash balances, inter-entity loan from Perkins Loan Fund, computer user access controls, and nonresident student tuition waivers.

### Information Systems Audits

**Management Information & Cost Recovery System (MICRS), Claims Processing (09DP-06):** The Department of Public Health and Human Services (DPHHS) is responsible for managing patient care at the five state-operated institutions. All expenses for treatment and care are initially paid by the state. In order

for the state to be reimbursed for the cost of services, DPHHS has established a Reimbursement Office (RO). The responsibility of RO is to identify and bill any means of payment a patient might have, including Medicare, Medicaid, private pay, or private insurance. To assist in the reimbursement process, DPHHS developed the Management Information and Cost Recovery System (MICRS), a computer system designed to assist RO in tracking patients, generating claims based on services provided, and submitting bills to responsible payers.

Auditors reviewed MICRS controls to ensure MICRS is completely and accurately creating and processing claims. The auditors also identified business processes within the Reimbursement Office that can be improved. Specifically, these related to reviewing access lists for appropriateness, documenting manual processes, removing inefficient processes, and correcting inaccurate reports. In addition to the audit work performed in this information systems audit, performance auditors also reviewed the Reimbursement Office and issued a separate report (08P-12 below).

**Consolidated Environmental Data Access & Retrieval System (CEDARS), Verification of Data Accuracy and Integrity (09DP-01):** The Consolidated Environmental Data Access and Retrieval System (CEDARS) is a computer system implemented by the Department of Environmental Quality (DEQ) to assist in the administration of environmental and facility site data, including permits and fines. Facility site data stored in CEDARS includes permit information, client contact information, and environmental records. The data and functionality of CEDARS is used by employees from multiple departments in DEQ to maintain business records, permits, fines, and a multitude of environmental data. Reports generated from CEDARS data are used by DEQ personnel, the Environmental Protection Agency (EPA), and the public.

Auditors reviewed development work to determine if DEQ had successfully and accurately migrated legacy data into CEDARS and to verify that CEDARS was accurately maintaining customer records and generating reports. The auditors also performed audit work to determine if security controls are in place to ensure the integrity of CEDARS data.

Overall, the auditors found DEQ has controls in place to

ensure CEDARS is accurately reporting environmental and site data, as well as securing access to CEDARS. However, the auditors did identify areas where DEQ can improve: implementing best practices for migration of new programs into CEDARS, and improving business continuity of CEDARS by specifically defining steps to recover from service interruptions.

## Performance Audits

### **Reimbursement Office Business Practices (08P-12):**

The Legislative Audit Division conducted a performance audit of the Department of Public Health and Human Services (department) Reimbursement Office's (RO) business practices. The RO is responsible for securing reimbursement for cost of services provided to residents residing at the five department facilities.

Cost of services submitted to the RO for fiscal year 2008 was \$68.9 million. The RO secured reimbursement of \$26.6 million (39 percent) of expenses incurred by the facilities. The remaining 61 percent, or \$42.4 million, is absorbed primarily through the general fund. Additionally, it was identified that 53 percent of all services provided in calendar years 2007 and 2008 were unbilled. Of these, 12,146 have the potential to be denied for untimely billing.

Audit findings included:

- Controls are not in place to ensure all medical service documents are received by the RO.
- Controls are not in place to ensure unbilled and denied claims are followed up on in a timely manner.
- Controls are not in place to ensure both hard-copy and electronic confidential information is secure and protected.

The audit presented a number of recommendations for additional controls over the program to improve the overall efficiency and effectiveness of the office and its success in securing reimbursements and increasing dollars reimbursed to the state.

### **Montana's Subsequent Injury Fund (09P-03):**

The Subsequent Injury Fund (SIF) is managed by the Department of Labor and Industry (department) and is a component of the state's Workers' Compensation program. The SIF is intended to help disabled workers obtain work by reducing an employer's long-term financial liability if a worker is reinjured on the job.

The audit had two objectives: 1) determine if the department has sufficient management controls in place to ensure compliance with Montana statutes in determining SIF assessments and detecting/deterring potential abuse to control costs, and 2) determine if the department is in compliance with applicable Health Insurance Portability and Accountability Act (HIPAA) requirements as it relates to the SIF program.

Audit activities determined that the department complied with statutes for determining assessments and meeting HIPAA-related requirements. However, a recommendation was made to the department to improve management controls related to improving processes, documentation, and detecting anomalies in the SIF database.

**State Vehicle Fleet Management (09P-04):** The state spent approximately \$9.9 million on new vehicles in fiscal year 2008 and has a fleet of approximately 5,000 passenger vehicles. Each agency is responsible for managing its own fleet of vehicles.

This performance audit examined fleet management practices at six agencies and vehicle purchasing activities at the Department of Administration. The audit concludes that the state can strengthen controls and policies related to fleet management activities. The audit contains a recommendation for enhancing management information capabilities.

Other recommendations address the need to improve controls over vehicle utilization, permanent vehicle assignments, maintenance of vehicles, employee commuting in state vehicles, and ensuring that employees who operate state vehicles meet driver requirements. The audit also includes a recommendation to the Department of Administration for improving vehicle purchasing practices.

**Fantasy Sports Parimutuel Gambling (09P-02):** Fantasy sports parimutuel gambling was introduced in Montana in 2008. These gambling activities are administered by the Board of Horse Racing, and the games are currently provided by the Montana State Lottery. The audit found that the involvement of the Montana State Lottery in the Board of Horse Racing's fantasy sports parimutuel gambling program does not comply with statute. Further legislative action is necessary to ensure that this new

form of gambling is administered in an equitable and transparent manner.

### Performance Audit Follow-up Reports

- 9-1-1 Emergency Telephone Systems, 10SP-06 (original report 07P-12)
- Emergency Medical Services, 10SP-03 (orig. 07P-11)
- Chemical Dependency and Sex Offender Treatment Programs, 09SP-22 (orig. 07P-08)
- Improving Montana's Opencut Mine Permitting Process, 10SP-05 (orig. 08P-04)
- Prioritizing Forest Fuels Reduction Projects, 09SP-14 (orig. 06P-13)
- Montana School for the Deaf and the Blind, 09SP-21 (orig. 07P-13)

### Next Audit Committee Meeting

The Legislative Audit Committee will meet Nov. 18 in Room 172 of the Capitol. For updated and additional information about the committee, visit [leg.mt.gov/audit](http://leg.mt.gov/audit). Or contact Legislative Auditor Tori Hunthausen, Legislative Audit Division, at (406) 444-3122 or [thunthausen@mt.gov](mailto:thunthausen@mt.gov).

### Legislative Finance Committee Gets Update on Status of State Pocketbook

The Legislative Finance Committee met Sept. 24-25. The agenda and meeting reports are on the Legislative Fiscal Division website at [leg.mt.gov/fiscal](http://leg.mt.gov/fiscal). For more information, contact Clayton Schenck at [cschenck@mt.gov](mailto:cschenck@mt.gov) or any other member of the LFD staff at (406) 444-2986. Some of the key discussions of the meeting are summarized below.

The next meeting of the Finance Committee is scheduled for Dec. 3-4.

### General Fund Status

The preliminary general fund ending balance for FY 2009 is \$392 million, or \$22.8 million higher than the amount estimated by the Legislature last session. Of this balance, \$20.5 million is "reestablished" to be expended in FY 2010 and/or FY 2011. That amount is \$17.9 million more than the Legislature expected and was not included in the 2011 biennium balance sheet.

The reauthorization to expend funds in subsequent years occurs whenever appropriations are specified for more than one year in HB 2 or other appropriation acts. This means the preliminary FY 2009 ending general fund balance when adjusted for unanticipated continuing authority is only \$5 million more than estimated by the Legislature. Although revenue collections were \$36.6 million less than estimated by the Legislature, reduced disbursements and other adjustments offset this shortfall, resulting in the slightly higher ending fund balance of \$5 million.

The 2011 biennium general fund ending balance is projected to be \$287.4 million before any revisions are made for revised revenue trends observed in FY 2009 that may affect revenue collections this biennium. The only change is the inclusion of actual revenue and disbursement amounts recorded in FY 2009 and the inclusion of continuing appropriations. This balance is based on no supplemental appropriations for FY 2011 but does include \$16.5 million for emergency appropriations.

An updated report on FY 2010 general fund collections through September 2009 is available on the LFD website. Total collections through September for FY 2010 are below the same period of FY 2009 by \$75.8 million, or 20.2 percent. The Legislature assumed revenue would decline by \$35.1 million, or 1.9 percent, for this fiscal year. This means that total collections must improve by a net of \$40.7 million in subsequent months to meet HJ2 estimates for FY 2010.

The analysis of collections focused on individual income taxes, corporation income taxes, TCA interest earnings, oil and gas production taxes, and sources with unusual collection patterns. Because the individual income tax is the major component of general fund revenue, a small change in this source can have a significant impact on the general fund.

As detailed in the report, collection data for three months of the fiscal year may not be indicative of future collection patterns for FY 2010. Several extrapolation techniques indicate that individual and corporation income tax collections could be below the HJ2 estimate anywhere from \$48 to \$121 million for FY 2010. This range is dependent on assumptions about the timing of

an economic rebound. Additional data on withholding, estimated tax payments, and refunds should help narrow the range. Conversely, oil production taxes could exceed the HJ2 estimate by as much as \$14 million if prices remain at \$60 per barrel and production does not fall below estimates.

The August report pointed out that collections were lagging estimates and that collections would have to be “made up” in subsequent months to meet HJ2 estimates. Collections through September are considerably worse than the August totals indicated. The lag in collections from vehicle fees and taxes, cigarette taxes, and liquor excise taxes, could account for \$15 million to \$20 million of the reduced collections. On the other hand, accelerated deposits for insurance taxes increased total general fund collections by almost \$12 million. The net change among these four sources is close to zero.

LFD staff will continue to analyze revenue trends and report that information to the Legislature. The next report will present collections through October. For more information, contact Terry Johnson at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or (406) 444-2952.

### **Property Tax Reappraisal**

The provisions in HB658 to mitigate property taxes because of cyclical property reappraisal were based on a “snapshot” of property values prior to the end of the legislative session. The property values represented work-in-progress by DOR at the time the snapshot was taken. DOR recently finalized property values. Because the values for commercial, agricultural, and timber properties are higher than presented during the session, the mitigation provisions contained in HB 658 no longer maintain the same level of revenue neutrality at the state level as shown in the fiscal note. For more information, contact Terry Johnson at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or (406) 444-2952.

### **2009 Wildfire Season, Firefighting Costs**

As in previous years, the largest fires of the 2009 wildfire season occurred after Labor Day. Before that, the state Department of Natural Resources and Conservation had spent about \$1 million on fire suppression. With the recent Indian Trail and Eagle Mount fires, expenditures will likely double. The Indian Trail fire is expected to cost the state \$1 million and the Eagle Mount fire about \$500,000.



The Indian Trail fire is not eligible for funds from the Federal Emergency Management Agency, but the Eagle Mount Fire is eligible for about \$300,000. So far, state fire costs are approximately \$2.2 million.

Although this season's fire costs are far below average, firefighting activity was not. As of Sept. 9, DNRC had flown 310 initial attack missions to fires that burned 1,938 acres, for an initial attack rate of 99 percent. In addition, DNRC provided mutual-aid assistance to 67 county-managed fires. For more information, contact Barb Smith at basmith@mt.gov or (406) 444-5347.

### Information Technology

Dick Clark, the state's chief technology information officer (CIO), discussed his concerns with the Montana Information Technology Act under Title 2, chapter 17, part 5, MCA. The act specifies governance duties and responsibilities for the Department of Administration and the CIO. Clark said that the act does not contain adequate enforcement provisions.

In June, the committee asked Clark to describe how the act affects the CIO's ability to meet the intent of the law. At the September meeting, Clark framed his comments from the perspective of how a new CIO would deal with the provisions of the act. He said that the vagueness of the act would limit a new CIO in the performance of statutory duties. Clark believes certain provisions of the act could be clarified, enhancing administrative authority so the CIO doesn't need to rely on other means to fulfill the duties and responsibilities of information technology governance.

Clark identified 32 areas in statute that were either major problems or minor concerns. A major problem would be a statutory requirement where the language of the law prevents its full implementation. A minor concern would be a statutory requirement that the CIO is able to meet but that could benefit from clearer language or a definition or word change.

Clark also identified 11 areas where an information technology governance best practice is used in other states but is not contained in Montana law. Clark said he will present the list of concerns to the Information Technology Board to get direction on how these concerns may be resolved. Clark will work with the board to develop

a plan to present to the committee for possible legislation.

For more information, contact Greg DeWitt at gcdewitt@mt.gov or (406) 444-5392.

### Health Plan for State Employees

The LFC interim work plan includes a review of certain elements of the state employees group health benefit plan, including state retirees who participate in the plan and the plan's reserve level. Both factors affect premium levels and may increase the cost of the monthly employer contribution.

The health plan lost \$3.2 million in 2008 compared to \$5.2 million in contributions to reserves in the previous year. The plan continues to experience higher costs than expected. In an effort to control costs and maintain services, several changes are being implemented in 2010.

The Legislature increased the employer contribution to the plan from \$626 a month in 2009 to \$679 in 2010 and \$733 in 2011. The employer share will cover increased premium costs for some employees.

The Department of Administration will make changes to the prescription drug component of the plan beginning Jan. 1, 2010, including:

- eliminating the \$100 deductible;
- assigning a grade to each drug based on the efficacy of the drug;
- establishing a co-payment amount based on the grade of the drug; and
- imposing a total annual co-payment amount of \$1,650 for an individual and \$3,300 for a family.

Until this year, the DOA tied non-Medicare retiree premiums to the amount charged active employees. Medicare-eligible retiree premiums are lower because Medicare pays part of the health-care cost. Although the premium for an individual retiree will remain the same in 2010, premiums for spouses and dependents will increase. Monthly premiums for retirees and members of their families will increase by \$28 a month to \$212, depending on the type of plan. Higher premiums will bring loss ratios in line with industry standards.

The LFC plans to consider other matters related to the state health care plan, including:

- an evaluation of the performance of the health plan in 2008 and year to date with respect to plan reserves;
- a comparison of the state employee health plan with the university system health plan;
- a review of the potential effects of federal health care reform on the state plan; and
- consideration of policy options for the state's health plans.

For more information, contact Lois Steinbeck at [lsteinbeck@mt.gov](mailto:lsteinbeck@mt.gov) or (406) 444-5391.

### Agency Performance Measurements

The LFC voted unanimously to continue the performance-measurement initiative that the committee launched last interim. This process provides legislators with current information about the progress state agencies are making in meeting goals and initiatives funded by the Legislature. State agencies will report, if they did not do so last interim, to LFC subcommittees on the 84 goals established for the 2009 biennium and on an additional 45 goals recommended for evaluation by legislative appropriation subcommittees. The LFC decided to focus on fewer goals and accepted staff recommendations on the goals for review.

The subcommittees will meet with state agencies Dec. 3 to discuss progress toward legislative goals. The five subcommittees include:

- General Government (Reps. Jon Sesso and Janna Taylor);
- Department of Public Health and Human Services (Sens. Dave Lewis and Dave Wanzonried);
- Natural Resources and Transportation (Sen. Rick Ripley and Rep. Galen Hollenbaugh);
- Judicial Branch, Law Enforcement, and Justice (Sens. Keith Bales and Steve Gallus); and
- Education (Reps. Cynthia Hiner and Bill Glaser).

State agency progress reports will be posted to the LFD website before the meeting. For more information about the performance measurement initiative, contact Kris Wilkinson at [kwilkinson@mt.gov](mailto:kwilkinson@mt.gov) or (406) 444-2722, or Barb Smith at [basmith@mt.gov](mailto:basmith@mt.gov) or (406) 444-5347.

### Federal Health Care Reform

Joy Johnson Wilson, health policy director and federal affairs counsel for the National Conference of State

Legislatures, reported on the progress of federal health care reform. Wilson described the process for consideration of health reform legislation and the major components of bills before Congress. Some of the components include:

- maintaining the employer-based system;
- expanding Medicaid to include non-traditional group(s) with incomes at or below 133% of the federal poverty level;
- requiring individual coverage;
- establishing a premium subsidy/tax credit program to make health insurance affordable;
- making insurance more accessible and affordable; and
- establishing essential benefits for insurance packages.

For more information, contact Lois Steinbeck at [lsteinbeck@mt.gov](mailto:lsteinbeck@mt.gov) or (406) 444-5391.

### DPHHS Evaluation of Budget Reductions

House Bill 676 directed the Department of Public Health and Human Services to make recommendations to the next Legislature on ways DPHHS might be able to reduce its budget. Last session, the Legislature made several reductions to the department's 2011 biennium appropriations, but it also provided an \$11 million general fund appropriation for each year of the biennium as a one-time appropriation. DPHHS has imposed travel restrictions and is reviewing vacant positions to prioritize hiring in order to meet 2011 biennium reductions. For more information, contact Lois Steinbeck at [lsteinbeck@mt.gov](mailto:lsteinbeck@mt.gov) or (406) 444-5391.

### Implementation of Healthy Montana Kids

The Department of Public Health and Human Services reported on the Healthy Montana Kids program approved by voters last November. The program combines the CHIP and Medicaid programs for children's health care. DPHHS said the program would begin Oct. 1.

The program offers two types of health coverage: one for families whose income is between 133 percent and 250 percent of the federal poverty level, and the other for families whose income is less than 133 percent of the federal poverty level. Assets are not considered in the determination of eligibility. The first type of health coverage has a benefit package similar to the state

employee group plan, while the second has a service package equivalent to Medicaid.

DPHHS reported that the online application is now available, but staff must still enter the application data into the appropriate eligibility system. For more information, contact Lois Steinbeck at lsteinbeck@mt.gov or (406) 444-5391.

## Revenue, Transportation Committee to Discuss Studies at December Meeting

The Revenue and Transportation Interim Committee will meet Thursday and Friday, Dec 3-4, in Room 137 of the Capitol. Although the agenda has not been set, the committee will take up each of its assigned studies, including the HB 657 study of the taxation of oil and natural gas property, the HB 658 review of property tax assistance, the SJR 16 study of uninsured and underinsured motorists, and the SJR 37 study of filing of individual income tax returns by married taxpayers.

The committee will also review matters related to property reappraisal and mitigation and will hear an update on general fund revenue collections. The state Departments of Revenue and Transportation will report on their respective activities.

An agenda and other meeting materials will be posted on the committee web page at [leg.mt.gov/rtic](http://leg.mt.gov/rtic) when available. For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

## SAVA Requests More Information on Consulting Services for Retirement Study

The State Administration and Veterans' Affairs Interim Committee conducted a conference call Oct. 1 to discuss options for getting retirement plan design and actuarial consulting services to help them with the House Bill 659 study of state retirement systems and the redesign of the Teachers' Retirement System (TRS).

The committee decided it needed more information on the cost of consulting services, which it will consider at its Oct. 29-30 meeting. The members voted to issue a "request for information" to get estimates of the number of hours of consulting services and the hourly cost for

eight possible design changes to the Public Employees Retirement System Defined Benefit Plan and TRS. Possible changes might include:

- applying the reduced early-retirement benefit for an employee who retires before the age of 60, regardless of years of service;
- applying the reduced early-retirement benefit for an employee who retires with less than 15 full-time years of service in the system;
- revising the timeframe used in the PERS Defined Benefit Plan to calculate the highest average compensation;
- revising the timeframe used in TRS to calculate the average final compensation;
- creating a mechanism that would automatically adjust the full-benefit retirement age for members based on changes in life expectancy;
- revising the guaranteed annual benefit adjustment (GABA) to reduce costs, including but not limited to an adjustment that would fluctuate based on investment returns;
- increasing the state's contribution rate;
- creating a hybrid defined benefit/defined contribution plan; and
- creating a professional retirement option for TRS that would increase benefits for members who wish to extend their careers to 30 years.

These plan changes were discussed to get an idea of the time and money that would be required for any plan design and actuarial consulting services. If the committee decides to hire a consultant, these changes may or may not be part of the consulting services.

For more information, contact Rachel Weiss at (406) 444-5367 or [rweiss@mt.gov](mailto:rweiss@mt.gov). Or visit the committee web page at [leg.mt.gov/sava](http://leg.mt.gov/sava).

## Water Policy Committee Delves into Water Mechanics, Water Rights

Although they may not pay it much mind, most people know that water doesn't come out of the faucet by magic. We know that snow, rain, rivers, and lakes provide us with the water we need to live and play.

What may be less well known is that a complex network of laws guide the use of water – be it for drinking, fishing, growing crops, or generating electricity.



To understand water law as it has evolved in Montana and the rest of the western United States, one must traipse through the subjects of history, human nature, and science. The Water Policy Interim Committee made that trek at its September meeting.

Professor Michelle Bryan-Mudd, who teaches water law at the University of Montana, provided the committee with an overview of the evolution of water law.

The Montana Water Center, Department of Natural Resources and Conservation, Montana Watercourse, and Bureau of Mines and Geology gave the WPIC a series of presentations demonstrating how water works. Included at the outdoor affair were models of how ground water interacts with surface water, how pollution may infiltrate waterways, and how rivers affect stream banks.

The concept that no one person can own water – but rather owns a right to use water – dates to the Romans,



*Montana Watercourse Director Debra Earl, foreground, demonstrates how nonpoint pollution can reach streams and how it can be mitigated. From left to right are WPIC members Rep. Russell Bean, Sen. Terry Murphy, and Rep. Walt McNutt. On the right is land-use attorney Myra Shults.*

who believed such things as air and water were common to all and could not be owned. Montana and other states claim ownership of water in their laws and constitutions.

The right to use water is considered a property right, much like a surface right or a mineral right. A water right can be sold, regulated, subjected to eminent domain, or taxed. However, water is different from other real property because water can be reused. And unlike other property rights, a water right is limited by its beneficial use. One way to think of beneficial use is as a use that “communities,

institutions, and laws have deemed valuable and worthy of protection.” Some states try to define these uses. In Montana, beneficial uses of water include agriculture, industry, power generation, recreation, and drinking, as well as fish habitat.

The laws guiding who gets to use water and when are rooted in the Prior Appropriation Doctrine. It is commonly described as “first in time, first in right.” However, it may be more easily understood with the more modern term of “first come, first served.”

The doctrine states that a person’s right to use a specific quantity of water depends on when the use of water began. The first person to use water from a source, such as a river, is considered to have the first right of use on that river. The second person could establish a right on all or a portion of the water that is left, and so on.

Sometimes, there is not enough water to satisfy all the water right holders on a particular source. In those cases, the most senior water right holder – the first user – gets the first chance to use the amount of water allowed by the water right.

Water rights are organized by permit systems. The DNRC, as well as representatives of several applicants for new water rights, described Montana’s permitting system to the WPIC. Wyoming adopted a permit system more than 100 years ago. The idea was that new permits would be granted only as long as existing priorities were protected. The permit system also limited unrealistic claims on water. Montana established its permit system in 1973.

While permit systems differ among states, in general an application is reviewed by an administrative agency that determines if there is unappropriated water available, if existing water right holders would be affected, and if there are any other reasons to deny or put conditions on the permit.

The next WPIC meeting is scheduled for Jan. 13-14 at the Capitol. Topics on the agenda include ground water wells that are exempt from permitting and the use of water produced by coal-bed methane wells.

For more information about the committee, contact Joe Kolman, committee staff, at (406) 444-9280 or [jkolman@mt.gov](mailto:jkolman@mt.gov), or visit the committee web page at [leg.mt.gov/water](http://leg.mt.gov/water).



## What Is the Process for Filling a Vacant Legislative Seat?

Article V, section 7, of the Montana Constitution provides that a vacancy in the Legislature shall be filled by special election for the unexpired term unless otherwise provided by law. Vacancies in the office of senator or representative



are also addressed in Title 5, ch. 2, part 4, MCA. Vacancies prior to a primary election are governed by 13-10-326, MCA, while vacancies after a primary

election and prior to general election are discussed in 13-10-327, MCA. Web addresses to access the constitutional and statutory provisions are listed at the end of this article.

Section 2-16-501, MCA, provides that an office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, MCA, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) resignation of the incumbent;
- (4) removal of the incumbent from office;
- (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;
- (6) absence of the incumbent from the state, without the permission of the Legislature, beyond the period allowed by law;
- (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the Legislature;
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;
- (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time

prescribed; or

- (10) the decision of a competent tribunal declaring void the incumbent's election or appointment.

Section 5-2-402, MCA, governs the procedure for the appointment of a legislator to a vacant seat. That section provides, with certain exceptions, that whenever a vacancy occurs in the Legislature, the vacancy must be filled by appointment by the county commissioners or, in the event of a multicounty district, the county commissioners of the counties comprising the district sitting as one appointing board. Section 5-2-402(2)(a), MCA, provides that whenever a vacancy is within a single county, the county commissioners are required to make the appointment as described in 5-2-403, 5-2-404, or 5-2-406, MCA.

Section 5-2-403, MCA, provides that whenever an appointee's predecessor served as a member of a political party, the appointee named under 5-2-402, MCA, must be a member of the same political party and must be selected from a list of three individuals provided by the county central committee in a district within a single county.

If the board of county commissioners is unable to elect an appointee from the submitted list, the board is required to request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The board is then required to select an appointee from the individuals named on both lists.

Section 5-2-404, MCA, provides that if a decision cannot be made by the board of county commissioners because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403, MCA.

Section 5-2-405(2), MCA, provides that if the vacancy occurs in the Senate, the appointee serves until a successor can be elected as provided in section 5-2-406, MCA. However, section 5-2-406(2), MCA, provides that when a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board of county commissioners under 5-2-402, MCA, shall serve until the end of the term.

Section 5-2-407, MCA, provides for an anticipated vacancy when it appears that a vacancy will exist because of an inability of an elected legislator to take office at the commencement of the term to which the legislator was elected. The statute states that an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406, MCA.

The procedure is much more complex when the Senate district in which the vacancy occurs encompasses all or parts of more than one county.

The web addresses listed below provide access to the constitutional and statutory provisions dealing with filling legislative vacancies.

- <http://data.opi.mt.gov/bills/mca/Constitution/V/7.htm>
- [http://data.opi.mt.gov/bills/mca\\_toc/5\\_2\\_4.htm](http://data.opi.mt.gov/bills/mca_toc/5_2_4.htm)
- <http://data.opi.mt.gov/bills/mca/13/10/13-10-326.htm>
- <http://data.opi.mt.gov/bills/mca/13/10/13-10-327.htm>

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## The Back Page

# Infrastructure, Regulation, and Safety of Natural Gas Pipelines

**By Sonja Nowakowski**  
**Legislative Research Analyst**

Terry Tatchell paces the streets and alleys along Ninth and Montana Avenues carrying a hand-held flame ionization machine, better known as a “sniffer.”

Tatchell, service foreman tech for the NorthWestern Energy gas department in Helena, first checks the sniffer’s filters and carefully calibrates it to ensure it picks up all traces of natural gas. He then takes out his map and reviews the area. He knows the gas line follows the sidewalk and alley, but the precise location of the line, and the points at which it branches off to homes in the area, is a bit of a mystery.

But Tatchell is a skilled detective. Using cracks and patterns in the pavement as clues and walking in an H-shaped pattern to cover as much ground as possible, he holds the machine and waits for the “Detecto-Pak” to do its job. The machine itself is the size of a large shoebox – a shoebox with a long hose that reaches to the ground and a plunger-like attachment that serves as the sniffing mechanism. Tests are conducted only on days when there is relatively little wind, to ensure accuracy.

Tatchell uses the machine to trace the natural gas lines to homes and checks the associated meters. On this particular trip, two meters register minor leaks. The sniffer emits a high-pitched squeal when gas is detected. He puts in a service order, and the meters are fixed within the next few

weeks. If leaks are detected in lines, a series of holes are bored into the ground to pinpoint the leak. Excavation work is then done and the line is repaired. Depending on the seriousness of a leak (there are different classes), the repair is done immediately or within a few weeks.

In 2008, NorthWestern Energy surveyed more than 2,000 miles of pipeline and approximately 45,000, or about 25 percent, of all natural gas services in Montana. The company found and repaired approximately 400 gas leaks, of which 16 were considered Class 1, 30 were Class 2, and 351 were Class 3.<sup>1</sup> The surveys, as demonstrated by Tatchell, are part of a complex system to monitor Montana’s natural gas system.

Thousands of miles of natural gas pipelines are underground in Montana. The gas is pressurized, propelled through pipelines, and delivered to more than 280,000 customers. While it sounds like a simple enough process, these pipelines are not only complex in terms of function but also in terms of management and regulation.

This complex system has been under increased scrutiny in Montana due to a catastrophic event that forever changed

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<sup>1</sup> Information provided by NorthWestern Energy. Class 1 leaks are major hazards that require immediate attention. Class 2 leaks are not hazardous but justify scheduled repair based on future hazard. Class 2 leaks are repaired before frost occurs. Class 3 leaks are not hazardous and occur when a small amount of gas is lost. Class 3 leaks are monitored on a semi-annual basis until repaired.

downtown Bozeman. Shortly after 8 a.m. on March 5, 2009, a natural gas explosion destroyed and damaged several businesses and killed one woman on Bozeman's Main Street. NorthWestern Energy, which is responsible for maintaining the service line, has indicated that natural forces, like frost heaving, may have caused a leak in the line between a main gas line and a local business.<sup>2</sup>

While the Bozeman disaster remains under investigation, it has opened the door to a discussion about the status of natural gas pipelines in Montana and the mechanisms in place to prevent such tragedies from being repeated.

A series of pipelines deliver natural gas to homes and businesses. Natural gas from the wellhead is exported to processing plants via gathering pipelines. Transmission pipelines then move the natural gas to terminals, where it is marketed and distributed. Finally, natural gas makes its way to the end user (a home or business) via distribution pipelines. Intrastate pipelines move natural gas throughout Montana, and interstate pipelines carry natural gas across state boundaries. This pipeline hierarchy is important in understanding the regulatory framework that exists to protect the public health and safety of all Montanans.

The federal government establishes minimum pipeline safety standards.<sup>3</sup> The Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation houses the Office of Pipeline Safety and has overall regulatory responsibility for hazardous liquid and gas pipelines under its jurisdiction. The Pipeline Inspection, Protection, Enforcement and Safety (PIPES)

Act of 2006, the Pipeline Safety Improvement Act of 2002, the 1968 Natural Gas Pipeline Safety Act, and the 1979 Hazardous Liquids Pipeline Safety Act outline the duties and powers of the Office of Pipeline Safety.

In Montana, the federal government inspects, regulates, and enforces interstate pipeline safety requirements. It also inspects, regulates, and enforces intrastate liquid pipeline safety requirements, including crude and petroleum

product lines. The state of Montana regulates, inspects, and enforces intrastate gas pipeline safety requirements. In Montana, this task is assigned to the Gas Pipeline Safety Division of the Montana Public Service Commission (PSC). The PSC inspects both natural gas distribution and transmission lines.

Three distribution utilities and two transmission pipeline systems handle about 99 percent of the natural gas

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*"While the Bozeman disaster remains under investigation, it has opened the door to a discussion about the status of natural gas pipelines in Montana and the mechanisms in place to prevent such tragedies."*

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consumed in Montana. The distribution utilities are NorthWestern Energy, Montana-Dakota Utilities, and Energy West of Great Falls, which uses NorthWestern Energy for gas transmission. NorthWestern Energy is the largest provider of natural gas in Montana, responsible for about 60 percent of all regulated sales. Montana-Dakota Utilities is the second largest and accounts for about 25-30 percent of all regulated natural gas sales in Montana.<sup>4</sup>

## Excavation

Pipeline releases or leaks can be the result of excavation, mechanical failure, operator error, or corrosion. In addition, natural forces like frost, flooding, and earthquakes can damage pipelines. Damage may include hairline cracks, pinhole leaks, and corrosion.

Most catastrophic failures are the result of unexpected and sudden stresses that act on an existing weak point in a pipe, like a hairline crack or even a simple bend. "Third-party excavation damage is the single greatest cause of accidents among natural gas distribution pipelines."<sup>5</sup>

In Montana, excavators must contact a "one-call" center

<sup>2</sup> "NWE: Natural forces caused explosion," Bozeman Daily Chronicle, Jodi Hausen, Aug. 25, 2009.

<sup>3</sup> U.S. Code of Federal Regulations (CFR), Title 49 "Transportation," Parts 190 - 199.

<sup>4</sup> "Understanding Energy in Montana: A Guide to Electricity, Natural Gas, Coal, and Petroleum Produced and Consumed in Montana," Jeff Blend, DEQ, 2009 update.

<sup>5</sup> "Pipeline Safety and Security: Federal Programs," CRS Report for Congress, Paul Parfomak, October 2008, page 13.

and locate underground lines before beginning any excavation. All owners of underground utilities have two days to respond to a request to locate their underground facilities. The regulations are established in state law.<sup>6</sup> The one-call center is not limited to natural gas pipelines; it includes all underground lines ranging from fiber optics to water lines.

If an underground facility is damaged by an excavator who has failed to use the one-call center, the excavator is liable to the owner of the underground facility for the actual cost of the repair of the facility. An additional “damage fee” also is imposed. For the first incident, the fee can’t exceed \$125. The second incident carries a penalty of no more than \$500, and additional incidents can cost up to \$1,000 each. The owner of the underground utility has to collect the fee and then distribute it to the one-call center. The fees were established by the 2005 Legislature.

Some Montana utilities have argued that current penalties in state law are insufficient to deter repeat one-call violations. Those most familiar with Montana’s one-call system point to penalties in other states. In Washington, excavators face civil penalties of no more than \$10,000 for each incident.<sup>7</sup> In Oregon, excavators incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for subsequent violations. If an excavator is shown to have intentionally violated the law, the penalty jumps to no more than \$5,000 for the first violation and no more than \$10,000 for additional violations. The Oregon Public Utility Commission collects the fee and turns the money over to the utility notification center, which operates similar to a state agency. Each year, a report covering the activities and operations of the Oregon Utility Notification Center is filed with the legislature and governor.<sup>8</sup>

“Montana has one of the weakest one-call laws in the country,” according to Joel Tierney, pipeline safety manager and utility engineering specialist for the PSC. “There is no enforcement authority.”

Kurt Baltrusch, Montana’s field representative for the Utilities Underground Location Center, also has concerns

about Montana’s one-call system. Collection of the fee is dependent upon the utility collecting it and sending it to the center.

“Some utilities already have a mad customer, and they just don’t want to pursue it,” Baltrusch said. “It’s a big effort to collect it, and some utilities just don’t want to bother with it.”

Since the fee was established in 2005, the one-call center has received about \$30,000 in fees, Baltrusch said. In the last year, about \$7,500 was turned into the center. The fees are used for public education and outreach, like the “call before you dig” advertisements. The one-call center is unable to track the number of actual incidents. Only one utility in Montana provides damage records to the center on a regular basis, despite the fact that the law requires the owners of underground facilities to report incidents, he said.

Baltrusch also said there is concern that there is only a penalty for damage that is reported. There have been incidents where a pipeline has been damaged, but there isn’t a “reportable incident.” Those incidents are not always recorded, and no fee is collected. Damage can cause dents and lead to corrosion and bigger problems down the road.

Others argue that requiring enforcement by a state agency will only further complicate the law and lead to costly delays. Those involved also stress that for the most part, contractors working in Montana do a good job of utilizing the one-call system. They also note that, on the flipside, there is no penalty if a utility makes an error. In some instances utilities mismark the location of a line, leading to line damage. (An excavator is not liable for damages when the utility makes an error.) Baltrusch would like to see the one-call center better meet all its customers’ needs.

“There are a lot of things we could do to make the system and the law better,” Baltrusch said.

Cary Hegreberg, executive director of the Montana Contractors Association, said the potential revision of Montana’s one-call law is complex. He said the majority of contractors are diligent about following the law.

“The contractors clearly embrace the concept of knowing where they are digging and preventing any damage to a

6 Title 69, chapter 4, part 5, MCA.

7 Revised Codes of Washington, 19.122.055.

8 Oregon Revised Statutes, 757.993.



utility,” he said. “But there are contractors who choose to ignore the one-call law and take their chances at their own peril. Those situations need to be addressed.”

However, if the law is changed, it needs to be done in a fashion that is not punitive to the contractors who are working to follow the law. Better policies are needed for those who fail to properly use the one-call system, he said. Hegreberg also said contractors could be open to higher fees if the one-call system is improved. For example, he said, when a contractor uses the one-call system, information about the depth of various utilities isn’t always available. Contractors often have to shovel an area by hand, expecting to find a utility a few inches underground. They later learn the utility is actually buried several feet underground. In many areas there is no clear utility corridor, and utilities are laid underground at varying depths and in a variety of patterns. Utilities also often have to be moved, and contractors can face utility delays. Projects can have a certain number of contract days, and waiting for utilities to move infrastructure can be a problem, he said.

“There are a lot of dynamics to the issue,” Hegreberg added.

In 2008, with the help of a grant, the PSC hired a consultant who met with stakeholders – including utilities, contractors, and law enforcement – and regulators to discuss problems with Montana’s statute and potential changes with a goal of potentially proposing legislation in 2011. To date there has not been agreement on potential changes.

### Age-old Questions

About one-quarter of the nation’s natural gas pipelines are more than 50 years old, and about \$19 billion of investment is needed to replace current pipelines in order to maintain existing capacity.<sup>9</sup>

There is no question that many of Montana’s natural gas pipelines, particularly those serving communities such as Helena, Bozeman, and Butte, are no exception to the federal statistics. In July 1931, natural gas first arrived in Bozeman. By early September, a southbound line

originating in northern Montana natural gas fields passed through a series of towns and arrived in Helena. Two weeks later, that line reached Butte. By 1932, Montana Power (now NorthWestern Energy) had 9,623 natural gas customers. The gas system in downtown Bozeman was purchased by Montana Power in the 1950s.

The types of pipelines in Montana are shown in the accompanying table. Smaller operators, those with fewer than 100 customers, aren’t included in the totals. A great deal of gathering line, such as that on private property, also is not included.

Pipeline Mileage Overview	
Pipeline System	Mileage
Hazardous Liquid Line	3,048
Gas transmission line	5,307
Gas gathering line	8
Gas distribution line (282,975 total services)	6,459
<b>Total</b>	<b>14,822</b>
<i>Source: Office of Pipeline Safety, U.S. Department of Transportation</i>	

With some natural gas lines approaching 80 years old, are Montanans at an increased risk? Regulators resoundingly answer “no.” In addition to leak detection surveys and ongoing maintenance and line replacement, steel pipelines have cathodic protection – a technique that controls the corrosion of metal surfaces.

“With proper protection, age is irrelevant,” said Eric Dahlgren, a utility engineering specialist with the PSC.

Most utilities also have a system in place to replace and upgrade older lines.

“Our natural gas system overall is in pretty good shape,” said Tatchell of NorthWestern Energy.

<sup>9</sup> “An Updated Assessment of Pipeline and Storage Infrastructure for the North American Gas Market,” Interstate Natural Gas Association of America, July 2004.

The U.S. Department of Energy fossil energy program also is developing new technologies to improve pipeline

safety and maintenance. The program was created about nine years ago in response to concerns about the nation's aging natural gas transmission and distribution lines and a need for increased efficiency and reliability. Projects range from designing magnetic robots that travel through underground gas pipelines and use cameras to visually inspect the interiors of some lines, to embedding sensors in pipelines that send an early warning when corrosion occurs or signal construction crews before heavy equipment does any damage.

### Leak Detection

Taken as a whole, releases from pipelines cause few annual fatalities compared to other product transportation modes. Gas transmission pipelines reported an average of 1.2 deaths per year between 2003 and 2007. In 2007, there were 76 natural gas transmission pipeline accidents.<sup>10</sup> While pipeline releases rarely lead to large numbers of fatalities, events are extremely costly and catastrophic. In 2000, for example, a natural gas pipeline explosion in New Mexico killed 12 campers and cost nearly \$1 million.<sup>11</sup> Following two catastrophic pipeline failures in 1999 and 2000, the federal government mandated improvements in pipeline safety.

Leak detection often begins with the property owner, and Montana utilities are working to better educate property owners in the state. This summer NorthWestern

Energy customers received a "scratch and sniff" card along with their monthly bills. The card was intended to help customers become more familiar with the smell of natural gas and remind them to call 911 or NorthWestern Energy if they smell natural gas. Numerous witnesses to the Bozeman incident reported smelling natural gas in the hours before the blast, but the smell was not reported to the proper authorities.

To comply with federal standards, utilities, like NorthWestern Energy, also hire contractors to conduct leak surveys. Once every four years, NorthWestern checks its distribution system lines in residential areas. Business district surveys are completed on an annual basis. Property owners are likely familiar with the surveys.

Utility surveys are all compiled and submitted to the PSC for review. All records are checked in accordance with federal procedures. In addition, the PSC inspects new construction and replacements. During a reportable incident,<sup>12</sup> the PSC also is called out.

For more information about state regulation of natural gas pipelines, contact PSC staff Joel Tierney, (406) 444-6181, or Eric Dahlgren, (406) 444-6186.

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10 "Pipeline Safety and Security: Federal Programs," CRS Report for Congress, Paul Parfomak, October 2008, page 2.

11 "Natural Gas Pipeline Rupture and Fire near Carlsbad, New Mexico," Pipeline Accident Report, National Transportation Safety Board, August 2000, page 13.

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12 A reportable incident means any of the following: (1) An event that involves a release of gas from a pipeline or of liquefied natural gas from a liquefied natural gas facility, and (a) a death, or personal injury necessitating in-patient hospitalization; or (b) estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more. (2) An event that results in an emergency shutdown of a liquefied natural gas facility. (3) An event that is significant, in the judgement of the operator, even though it did not meet the criteria of (1) or (2).

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

## November 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9 Energy & Telecomm Committee, 9:30 a.m., Room 102 Education Subcommittee, 9 a.m., Room 137	10 Energy & Telecomm Committee, 8 a.m., Room 102	11	12	13	14
15	16 Children & Families Committee, time TBA, Room 137	17 Economic Affairs Committee, 8:30 a.m., Room 152	18 Legislative Audit Committee, time TBA, Room 172	19	20	21
22	23	24	25	26	27	28
29	30					

## December 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3 Legislative Finance Committee, 1 p.m., Room 102 Revenue & Transportation Committee, time TBA, Room 137	4 Legislative Finance Committee, 8 a.m., Room 102 Revenue & Transportation Committee, time TBA, Room 137	5
6	7	8	9	10 Education & Local Govt Committee, time & place TBA State Admin & Veterans' Affairs Committee, time & place TBA	11 Education & Local Govt Committee, time & place TBA State Admin & Veterans' Affairs Committee, time & place TBA	12
13	14 Legislative Council, 9 a.m., Room 102 Law & Justice Committee, time & place TBA	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Legislative Services Division  
PO Box 201706  
Helena, MT 59620-1706